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**REPORT OF THE THIRTEENTH MEETING OF THE
ADVISORY COMMITTEE**

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REPORT OF THE THIRTEENTH SESSION OF THE ADVISORY COMMITTEE

OPENING OF THE MEETING

The Advisory Committee met at IMSO Headquarters on 15 and 16 November 2005. The Agenda, List of Participants and Terms of Reference are attached at Annexes I to III, respectively, to this Report. The representatives of Denmark and the United States of America, and the observer from Portugal attended via conference call.

1 APPROVAL OF AGENDA

The Committee approved the Agenda.

2 OUTCOME OF THE TWELFTH SESSION OF THE ADVISORY COMMITTEE

The Committee noted the report of its Twelfth Session, which was held on 3 and 4 October 2005. The report was sent to all IMSO Member States on 1 November 2005.

3 DRAFT REFERENCE PUBLIC SERVICES AGREEMENT

3.1 The Director informed the meeting that the version of the Draft Reference PSA presented to this Session (AC/13/3) included changes based on comments made by Inmarsat and potential providers during and subsequent to the last session of the Committee. The Director informed the Committee that he had some concerns arising from remarks made by Inmarsat at the previous session about the company's debt arrangements. The Inmarsat representative was therefore invited to join the meeting in closed session. The Director then requested Inmarsat to provide information on the company's commitments made in order to obtain debt and what banking agreements existed, if any, which would allow a bank to enforce winding up of the company in any particular circumstances. The Inmarsat representative undertook to provide the information requested. The

Committee noted that such information should remain confidential between the company and the Organization.

3.2 The Committee then invited representatives of potential future providers to attend the meeting for discussions on the draft Reference Public Services Agreement, as observers, and contribute to the discussions on the draft. Delegations from Iridium, MVS and Terrestar therefore joined the meeting for this agenda item.

3.3 The Committee recalled that, at its Eleventh Session, it had agreed most of the Clauses of the draft Reference PSA, with only a few items remaining in square brackets. At its Twelfth Session, the Committee had reviewed a further draft of the Reference Public Services Agreement, which took into account the new “clear distinction” principle proposed by the Director, and the issues that remained outstanding from the perspective of the Providers and had noted *“that the Director will further develop the text of the draft Reference PSA for final review at its next session, and encouraged the Director to work with members of the Committee, Inmarsat and potential service providers to resolve the small number of outstanding issues before its next session”*.

3.4 At the request of the United States, a legal analysis by the US Department of State of the relationship between IMO and IMSO was distributed during the meeting and is attached at Annex V. The United States reserved its position in relation to the “clear cut principle”.

3.5 In this regard, the Committee noted comments by the Director on the issue of sovereignty versus liability which was raised at the end of paragraph 3 of the US legal analysis (Annex V). The Director referred as an example to the Convention on International Liability for Damage Caused by Space Objects, Article II of which states *“A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the Earth or to aircraft in flight.”* This Convention is in force and the Depositaries are the Governments of the Russian Federation, the United Kingdom and the United States. The Director also referred to the SOLAS Convention which provides that a ship shall be compensated if it is unduly detained or delayed by the Port State (SOLAS Regulation 1/19).

3.6 The Committee noted document AC/13/3, which had been submitted by the Director, “Draft Reference Public Services Agreement”. The Committee noted that there were three significant areas in the Reference PSA which remained to be resolved by the Committee, relating to the Appeals Procedure (Clause 7), Winding Up (Clause 12) and Budget Apportionment (Annex 3).

3.7 The Committee noted that since the Twelfth Session, Inmarsat, on behalf of the industry consultation group, had provided proposed texts to the Advisory Committee covering the issues of Appeals and Winding Up. The Committee also noted that the Director believed that these proposed texts did not serve the best interests of the Organization and proposed the alternative approach reflected in Clauses 11.2, 11.3 and 12 of the draft Reference Public Services Agreement attached to document AC/13/3.

Appeal procedure

3.8 In relation to the appeals procedure (Clause 7), the Committee noted:

- (a) the text of Clause 11 proposed by the Director, resulting from the discussions at the Twelfth Session of the Committee; and
- (b) document AC/13/3.1 “Procedures for Compliance” which had been submitted by the United States, and which proposed procedures for resolving a dispute between the Organization and the Company resulting from a decision of non-compliance, pursuant to Article 7.2 of the draft PSA.

3.9 After extensive discussion on this issue, the Committee agreed to include the following text in the draft Reference PSA in lieu of the former paragraphs 7.9, 7.10 and 7.11:

“7.9 If the Company does not rectify the non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, the Organization will decide whether recognition of the Company’s GMDSS services should be made conditional, suspended or withdrawn.

7.10 The Company may, at any time following the issue of a Letter of Non-compliance, refer the matter to the Assembly for resolution. The Director may convene an Extraordinary Session of the Assembly for this purpose as soon as possible and in any case not later than three months after the request by the Company.

7.11 Any decision by the Assembly in this respect shall be final and binding on both the Organization and the Company, as appropriate. The Organization and the Company shall implement the decision of the Assembly without delay.

7.12 If the Company does not implement the decision of the Assembly to the satisfaction of the Organization, the Organization shall withdraw recognition of the Company's GMDSS services.

7.13 If the Company takes sufficient action during this process to rectify the non-compliance, the Organization may withdraw the Provisional Letter of Non-compliance or Letter of Non-compliance at any time.

7.14 The Organization will inform the Secretary-General of IMO of any decision to make conditional, suspend or withdraw recognition of any GMDSS satellite services."

Winding up

3.10 In relation to Winding up (Clause 12), the Committee noted that there were three options:

1. the proposal by Inmarsat;
2. the Director's proposed wording for Clauses 11 and 12; and
3. the Special Share Provisions in the Articles of Association of Inmarsat Ventures plc, which required IMSO's consent to certain changes.

3.11 The Committee agreed on the following text for Clauses 11 and 12:

“11 ASSIGNMENT

11.1 Otherwise than in the case of a reconstruction of the Company, or assignment to a subsidiary or to its holding company or to a subsidiary of that holding company, as those expressions are used in the UK Companies Act 1985, as amended, the Company may not assign any of its rights or obligations under this Agreement in whole or in part without the prior approval in writing of the Organization.

11.2 The Company shall not assign to any other entity any right to wind up the Company under any circumstances unless:

.1 that other entity has entered into a binding agreement with the Organization that secures the continuity of GMDSS services, to the satisfaction of the Organization; and

.2 the Company has received the consent in writing of the Organization.

11.3 The Company warrants that all existing contracts or other commitments that assign the right to wind up the Company have been disclosed to the Organization.

12 VOLUNTARY WINDING UP

In order to secure the continuity of the GMDSS services provided by the Company, any decision to voluntarily wind up the Company shall take effect only with the consent in writing of the Organization which shall not be withheld or delayed unless the GMDSS services are jeopardised.”

Other Amendments

3.12 The Committee reaffirmed decisions, taken at its Twelfth Session, as follows:

- (a) amend paragraph 2.1.4 to read: “*The organization shall normally require ...;*”
- (b) delete the square brackets around “*five*” in the second sentence of paragraph 2.1.4;
- (c) amend paragraph 10.3 to read “... *conduct informal consultations* ...”; and
- (d) delete the square brackets around “*five*” in paragraph 11(c)

3.13 The Committee reviewed Annexes 1 and 2 of the draft Reference PSA and agreed the text as drafted, with one minor editorial change in paragraph five of Annex 1 to refer to the Letter of Compliance in preference to the Certificate of Compliance.

3.14 In relation to budget apportionment, the Committee considered the issue and draft text of Annex 3 under agenda item 4. The Legal Fund, and consequential text for the draft Reference PSA, were also considered under agenda item 4.

3.15 The Committee noted an expression of appreciation by Inmarsat, on behalf of the industry consultation group, for the successful conclusion of the Reference PSA drafting exercise which, after long negotiation, had reached a compromise broadly acceptable to the Organization, governments, Inmarsat and some possible GMDSS service providers.

3.16 The Committee expressed its appreciation to Inmarsat and other potential service providers who had made a significant contribution to the finalization of the Reference Public Services Agreement.

3.17 The Committee noted concerns expressed by the Russian Federation that no procedure existed in relation to what would happen to mariners if a GMDSS provider defaulted on its obligations. The Committee agreed that the Director should discuss this matter with the IMO Secretariat, and draft a submission to IMO for consideration by the Advisory Committee.

3.18 The Committee noted the view expressed by the United States that: “*although the Committee had made progress by concluding the Reference PSA drafting exercise, we, the Committee, had failed in creating a framework to attract new Service Providers according to them and as evidenced by the disagreement with these Providers on a number of key points including, but*

not limited to, cost, apportionment, and appeal process. The United States went on to point out that without the entry of new providers into the GMDSS, particularly in current heady business environment, competition and choice are our only allies in keeping our mariners safe. Because of this, the Party of the U.S. suggested that we must look into fundamental changes in how to cost effectively provide oversight both in IMSO and the IMO”.

4 BUDGET APPORTIONMENT BETWEEN SERVICE PROVIDERS

4.1 The Committee noted document AC/13/4, which had been submitted by the Director, “Budget Apportionment Scheme”; in particular that at its Twelfth Session, the Committee had reviewed the Director’s proposals for the development and agreement of the Organization’s annual budget and, *“recalling that Member States do not contribute to the budget and that this principle was embodied in the Convention, ... agreed on the principles to be embodied in the budget apportionment scheme: (Report of the Twelfth meeting of the Advisory Committee, AC/12/Report, paragraph 6.15).*

4.2 The Twelfth Session of the Committee had also noted that *“the Director will further refine the budget apportionment scheme as well as developing detailed proposals for how the legal and contingency funds will be developed, funded and operated, taking into account comments made.”*

4.3 The Committee noted the draft Assembly/18 document (AC/13/4 Annex) which proposed a method of apportioning the costs of the Organization between more than one provider and suggested detailed arrangements for the Legal and Contingency Funds.

4.4 The Committee noted that the Director had indicated that there were two possible methods of cost apportionment, either:

- (a) an equal cost sharing arrangement which would reflect, as closely as possible, the actual workload on the Secretariat; or
- (b) a more complex formula based on the number of GMDSS terminals of each Service Provider, the amount of each Service Provider’s maritime revenues or profit, or some other business-related measures.

The Director proposed that the equal cost sharing arrangement (option (a)) would be cheaper, the simplest to operate and would be more transparent.

4.5 The Committee recognised that there were many ways to apportion the costs of the Organization among Service Providers. However, the Committee also recognised that any formula that required the input of confidential data could lead to a lack of transparency and might require retrospective adjustment of a company's contributions after some figures had been audited.

4.6 Following extensive discussion, a small majority of those who spoke were in favour of the simple equal cost sharing approach, and the Committee agreed to advise the Director that this should form the basis of his submission to the Assembly on this issue.

4.7 The Committee noted that, following discussions at the Twelfth Session, separate Legal and Contingency Funds had been proposed as follows:

- (a) a Legal Fund to provide the Organization with the capability to initiate or defend arbitration or other legal proceedings against one or more of the providers or potential providers; and
- (b) a Contingency Fund to provide the Organization with the capacity to meet unexpected or extraordinary operational costs.

Legal Fund

4.8 In relation to the Legal Fund, the Committee noted that the Director had provided two possible models, as follows:

- (a) each provider, as a condition of receiving GMDSS approval, would deposit a sum into the Legal Fund. Such sum would become the property of the Organization, to use at its entire discretion for any legal purpose approved by the Assembly, and would not be returnable; or
- (b) each provider, as a condition of receiving GMDSS approval, would deposit a bond into the Legal Fund. Such sum would be used only to pay for legal proceedings relating to that provider and would be returnable at any time the provider ceases to provide GMDSS services.

The Director preferred the first option.

4.9 During the discussions on the Legal Fund, the Committee noted that:

- (a) the Service Providers had indicated that they would prefer that such a fund should not be established; and
- (b) Inmarsat considered that the existing fund, which had been set up as a condition of privatisation, should be returned to Inmarsat when a new PSA was signed or when another Provider entered the GMDSS.

4.10 The Committee reviewed a number of alternative methods of providing the Organization with the freedom to initiate or defend legal proceedings when necessary. The United States drew attention to the possibility of a government providing the necessary financial guarantee, and the representative of Iridium proposed that the organization should consider legal insurance to cover the costs.

4.11 After considering these new proposals, the Committee concluded that a flexible procedure would be desirable in this regard and agreed that the following text should be added to the draft Reference PSA:

“10.4 The Company shall indemnify the Organization against any and all costs associated with:

.1 the Company referring any issue to the Assembly for resolution under the terms of paragraph 7.10 of the PSA; or

.2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of the PSA.

The Company may provide such indemnity through a suitable Legal Insurance policy, or through a legally binding instrument of indemnity provided by a government, or by any other means accepted by the Organization. The acceptance of a particular indemnity offered by any Provider shall be subject to the agreement of the Organization as to its suitability and sufficiency.”

4.12 The Committee further agreed text on this subject to be included in the Director's proposal to the Assembly on financial procedures.

Contingency Fund

4.13 The Committee agreed that a Contingency Fund should be established as a small percentage of the total annual operational budget each year with effect from the 2006 Budget. The percentage should be proposed by the Director and agreed by the Advisory Committee as part of the budget setting exercise each year. Given the current size of the Organization's budget, the Committee proposed that, in 2006, the Contingency element of the annual budget should be set at one per cent of the Organization's total operational budget, which would yield in the region of £5,225.

4.14 The Committee therefore recommended that the Assembly:

- (a) adopts the arrangements for the development, agreement and apportionment of the Organization's budget set out in Annex VI to this Report;
- (b) decides that these arrangements shall be annexed to the Reference Public Services Agreement and shall form an integral part of any future Public Services Agreement signed by the Director on behalf of the Organization;
- (c) decides also to delegate the tasks of annual agreement of the Organization's budget to the Advisory Committee;
- (d) instructs the Director to provide a report on financial matters to every regular session of the Assembly; and
- (e) requests the Director to keep these arrangements under review and to propose amendments to them as necessary.

Agreement of Draft Reference PSA

4.15 The Committee agreed the text of the draft Reference Public Services Agreement as set out at Annex VII to this Report, and recommended its

approval by the Assembly. One possible future GMDSS service provider expressed dissatisfaction with some elements of the draft Reference PSA.

5 INDEPENDENT GROUP OF EXPERTS: TERMS OF REFERENCE, VERIFICATION AND EVALUATION PROCEDURES

5.1 The Committee noted document AC/13/5 “Independent Group of Experts: Terms of Reference, Verification and Evaluation Procedures”, which had been submitted by the Director. The Committee recalled that, at its Twelfth Session, it had *“agreed that an independent Group of Experts would be needed to evaluate and verify the operational, technical and other characteristics of services being proposed for inclusion in the GMDSS if IMO establishes the regulatory framework under which IMSO undertakes oversight responsibility, and invited the Director to explore how such a Group of Experts could be established and to develop the constitution, terms of reference and costs for such a Group, and present this at the next Committee meeting.”*

5.2 The Committee noted that the Director has further considered this matter and proposed terms of reference, verification and evaluation procedures for the Independent Group of Experts. The Committee also noted the cost estimates for verification and evaluation provided by the Director.

5.3 The Committee noted concerns raised by the USA and some potential providers that the costs of the Independent Group of Experts could discourage potential service providers from applying to provide GMDSS services and that either individual Governments or the IMSO Secretariat should carry out the evaluation function.

5.4 After thoroughly considering these issues, the Committee agreed that an Independent Group of Experts should be used to assist the Director to verify and evaluate information offered by potential new providers in order to provide transparency and openness in the process. The Committee concluded that:

- (a) the Group should normally be composed of three members;
- (b) consideration should be given to the need for each expert to come from a different country/region; and

- (c) the Director should seek to ensure members had no conflicting interests and in particular should not have any connection with the applicant company nor with the sponsoring government.

5.5 Some possible future GMDSS service providers believed that the process of verification and evaluation should instead be carried out by the Secretariat.

5.6 The Committee agreed the terms of reference and operational procedures for the Independent Group of Experts attached at Annex VIII to this Report.

6 OVERSIGHT FUNCTIONS AND RESPONSIBILITIES

6.1 The Committee noted, without discussion, document AC/13/6 "Oversight Functions and Responsibilities" which had been submitted by the Director, which discussed the legal basis of oversight of Inmarsat's public service obligations, under the IMSO Convention and the Public Services Agreement, and the GMDSS oversight activities, including the annual report to IMO. The annual report for 2005 will be drafted by the Director during November 2005 for review by the Advisory Committee and submitted to IMO for COMSAR 10 by 2 December 2005.

7 DRAFT BUDGET FOR 2006

7.1 The Committee noted document AC/13/7/REV/1, which had been submitted by the Director, "Indicative Report on Financial Accounts for 2005 and Draft Budget for 2006". Representatives of Inmarsat and the potential providers did not attend this part of the meeting.

7.2 The Committee noted that the Director, in his budgetary preparations, had used an inflation figure of 3 percent for salaries increase, which was based on the UK Retail Price Index (2.7 percent as at the end of October 2005) taken from information contained in the London Financial Times. Some delegations indicated that the UK RPI, promulgated from time to time by the UK Treasury and published in the press and on official government web sites, should be used as a fixed index for annual staff salaries increase. There

was some discussion concerning the date on which the measure of UK RPI should be taken. The Committee generally felt that future salary increases should take account of UK RPI on a particular date, but did not reach a firm conclusion on this issue.

7.3 The Committee noted that the breakdown of the salaries budget took into account the following elements:

- (a) basic salaries;
- (b) allowances (non-residence, housing and bi-annual home leave for the Director, as well as dependants allowances; employer costs: (pension and life, health, disability and office insurances); and
- (c) accounting support (supplied by Cospas-Sarsat up to July 2005 and now provided under contract by Mazars).

7.4 The Committee finally agreed that the budget for 2006 should provide a three percent cost of living increase for all IMSO staff as well as a further two percent increase for progression of salary at the discretion of the Director.

7.5 In response to questions raised, the Director indicated that the travel budget normally covered travel for the Director and the Head of Technical Services to appropriate meetings of the United Nations, the UN Committee on the Peaceful Uses of Outer Space, the International Civil Aviation Organization, Cospas-Sarsat, the International Hydrographic Office and the World Meteorological Organization. Details of meetings attended were reported in the annual report to Parties on the activities of the Secretariat, the next of which will be issued in 2006.

7.6 Due to the heavy workload associated with meetings of IMSO and IMO in London during 2005, the budgeted amount for overseas travel had been underspent. The draft travel budget for 2006 covered the normal travel as indicated above, as well as a provision for the possibility of at least one IMO meeting being held out of London during the refurbishment of IMO's headquarters building.

7.7 The Committee noted that the Meetings budget covered room rental, interpretation, refreshments, translations, temporary staff and technical

equipment. The 2005 budget covered a three day Assembly session and nine days of Advisory Committee meetings. The draft 2006 budget anticipated a three day regular Assembly session and six days of Advisory Committee meetings.

7.8 As indicated in section 8.1, the Committee subsequently advised the Director to cancel the Eighteenth (Extraordinary) Session convened for December 2006, as well as the one day meeting of the Advisory Committee in December, and agreed an increase in meetings during 2006. The Committee noted and agreed the resulting amendments to the 2005 forecast (£444,499, with an anticipated surplus at year end of £54,823) and the 2006 budget £540,685 as indicated at Annex IX to this Report.

7.9 The Committee noted concerns expressed that, in order to attract new Service Providers, it was important that the Budget be at the lowest possible level and as detailed as possible.

7.10 The Committee noted the forecast for 2005 which anticipated a surplus of £54,823 at year end, and that the accounts will be audited early in 2006.

7.11 The Committee agreed the total budget for 2006 of £540,685, and also agreed that the one percent contingency fee agreed in paragraph 4.13 above, should be included in the 2006 budget.

8 ANY OTHER BUSINESS

8.1 Extraordinary Session of the IMSO Assembly

8.1.1 The Committee noted a number of concerns relating to the holding of the Extraordinary Session of the Assembly in December 2005. After some discussion, the Committee agreed that:

- (a) although it had agreed the final text of the Reference Public Services Agreement (PSA) and had recommended its approval by the Assembly, Member States (in particular those which are not members of the Committee) would need more time to study this document in the light of the changes made to the fundamental principle underlying the PSA and revisions to IMO Resolution A.888(21) (clear distinction

principle between oversight functions of IMSO and regulatory functions of IMO), and the need for both documents to be in line;

- (b) in the light of this, it would be appropriate to wait until the IMO Maritime Safety Committee (MSC) has considered the revisions to Resolution A.888(21) before the IMSO Assembly approves the PSA, noting that this consideration is expected to take place at MSC-81 to be held 10 to 19 May 2006; and
- (c) in relation to LRIT, it would also be appropriate to wait until IMO has agreed the details of the LRIT oversight functions, and it is expected that, following the meetings of IMO COMSAR and MSC in February and May 2006, respectively, the issues will be sufficiently clear to enable IMSO Member States to formally respond to the question posed by IMO.

8.1.2 The Committee, therefore, advised the Director to cancel the Extraordinary Session of the Assembly, and to postpone to the regular session of the IMSO Assembly in 2006 of the formal adoption of the amendments to the IMSO Convention and resolution of all outstanding issues. The Committee agreed that the Director should plan for a five day Session of the IMSO Assembly in 2006. The Committee also agreed to cancel its Fourteenth Session scheduled for 13 December 2005 and that the Director should plan for four two day sessions of the Committee in 2006. The Committee noted the budgetary implications of the changes to the meetings schedule as indicated in paragraph 7.6 and Annex IX to this Report.

8.1.3 In considering the repercussions of cancellation of the Extraordinary session of the Assembly, the Committee took full account of the costs of cancellation, both to the Organization and to individual Member States. In an effort to minimise the impact on Member States representatives, the Committee also advised the Director to send an urgent letter to all Parties informing them about the revised arrangements. The Committee also advised the Director to prepare documents to be submitted to the IMO COMSAR Subcommittee and/or the IMO Maritime Safety Committee (MSC) informing them about the preliminary deliberations concerning the LRIT issue carried out by the IMSO Advisory Committee.

8.2 **Next Sessions of the IMSO Advisory Committee**

The Committee agreed that sessions of the Advisory Committee should be held just after the meetings of IMO COMSAR and MSC in February and May 2006, respectively.

8.3 **Representatives to IMSO**

8.3.1 The Committee noted that Mr Jorgen Rasmussen of Denmark would shortly be retiring. The Director and the Committee paid tribute to Mr Rasmussen who had been Chairman of the Assembly from 2000 to 2004, had represented Denmark at IMSO meetings during that time. Mr Rasmussen had contributed to the continued success of the Organization especially as sponsor of the amendments to the Convention which had been approved by the Assembly. The Committee wished Mr Rasmussen a long and healthy retirement.

8.3.2 The Committee also noted that Mrs Martha Ines Ortegon of Colombia expected to return home soon and would no longer attend IMSO Meetings. The Committee thanked Mrs Ortegon for her contributions to the Organization, and in particular her suggestion of the fixed fee policy which has been accepted by the Committee, and wished her every success in the future.

9 **APPROVAL OF THE REPORT**

The Meeting approved the Report of its Thirteenth Session by correspondence.
